

## **REMARKS**

Reconsideration and withdrawal of the rejections of this application and consideration and entry of this paper are respectfully requested in view of the herein remarks, which place the application in condition for allowance.

### **I. STATUS OF CLAIMS AND FORMAL MATTERS**

With the addition of new claims 29-74, claims 13-74 are now pending in this application. No new matter has been added. Claims 13-74 roughly correspond to previous claims 13-28. The present claims can be categorized as follows:

Claim 13 is directed to a method of combating harmful plants in cotton crops; claims 14-28 describe the method of claim 13 wherein the composition is a combination of an herbicide (A1) and an herbicide (B); claims 29-46 describe the method of claim 13 wherein the composition is a combination of an herbicide (A2) and an herbicide (B). (roughly corresponds to previous claims 13-20, 24, 25 and 28)

Claim 47 is directed toward a herbicidal composition which comprises a combination of herbicides (A) and (B); claims 48-58 describe a composition which is a combination of an herbicide (A1) and an herbicide (B); claims 59-73 describe a composition which is a combination of an herbicide (A2) and an herbicide (B). (roughly corresponds to previous claims 21-23 and 27)

Claim 62 is directed to a method of influencing the yield or the constituents of cotton plant using the composition of claim 47. (roughly corresponds to previous claim 26)

The Examiner is reminded that the applicants' election from their paper mailed on 30 January 2003, indicated glufosinate-ammonium salt as herbicide A and pyrithiobac as herbicide B.

### **II. THE 35 U.S.C. §102(e) REJECTION HAS BEEN OVERCOME**

Previous claims 13, 15, 18, 20, 21, 25 and 26 had been rejected as allegedly being anticipated by Ruegg et al. (U.S. Patent 6,180,563). Request for reconsideration is respectfully requested for the following reasons.

As noted in the previous response, a holding of anticipation requires that each and every element of the applicants' claimed invention be taught by the cited reference. see MPEP 2131.

Ruegg et al. does not meet this criteria for establishing anticipation. The Ruegg reference is directed to a synergistic combination of an herbicide of formula (I) - also commonly known as

trifloxysulfuron (a pyrimidinylsulfonylurea herbicide - see attachment) - and a substance of formula (IV), e.g. glyphosate or glufosinate. As these herbicides were well-known in the art at the time of filing by Ruegg, the compositions were allowed for their showing of unexpected results for weed control based on this specific combination.

However, while Ruegg refers to the use of glufosinate, the applicants' claims do not specifically include the use of a pyrimidinylsulfonylurea herbicide.

If the examiner was relying on the applicants' use of the open ended term "comprising" in the applicants' claim language, the examiner is reminded that anticipation also requires as description of the invention from the reference which describes the invention is as complete a detail as described by the inventors. Ruegg does not disclose compositions which contain the applicants (B) herbicides nor is there any evidence that such a combination would maintain the unexpected results disclosed by Ruegg for their specific invention.

In addition, this application was subject to a restriction and election of species requirement which stated that the applicants were claiming several patentably distinct inventions (see Paper No. 6 dated 1 August 2000). The examiner cannot simultaneously argue that the applicants invention is patentably distinct whereas the cited reference is not.

For any of these reasons, the Ruegg et al. reference does not anticipate the applicants' claimed invention

### **III. THE 35 U.S.C. §103(a) REJECTIONS HAVE BEEN OVERCOME**

Previous claims 27 and 28 had been rejected as allegedly being obvious over Ruegg et al., *ibid.* and Ruegg (U.S. Patent 5,965,486).

The applicants' arguments with respect to Ruegg et al. should be considered repeated here. In addition, the second Ruegg reference (the '486 patent), suffers from the same deficiencies as the first Ruegg reference, i.e. the '486 patent is disclosing a synergistic combination of fluthiacet with a compound of formula II or III and Ruegg's evidence for unexpected results only extends to combinations with fluthiacet (see attachment).

In order to establish a *prima facie* case of obviousness, all claim limitations must be taught and suggest by the references. see MPEP 2143.03. However, neither trifloxysulfuron nor fluthiacet is not among the herbicides (B) which is being claimed by the applicants. Furthermore, one of ordinary skill in the art when considering both the applicants' claims and those of Ruegg "as a whole" would not be directed to the respective combinations of herbicides

nor would there be there be an expectation of synergistic or unexpected results for modifications to the respective inventions.

As all claim limitations are not taught by the Ruegg references, there can be no holding of obviousness and this rejection should be withdrawn.

Previous claims 13-15, 18, 20-22, 25 and 26 had been rejected as allegedly being obvious over Ruegg (U.S. Patent 5,965,486) in view of Tymonko (U.S. Patent 4,822,401).

The applicants comments with respect to Ruegg are to be considered repeated here. Tymonko, while directed to clomazone (which is encompassed by the herbicide (B) being claimed by the inventors), is not being combined with an herbicide (A), i.e. Tymonko's organophosphorus pesticides are not encompassed by the herbicides defined by the applicants' (A1) or (A2).

The Ruegg and Tymonko references offer no teaching to combine clomazone with the organophosphorus compounds used in Ruegg; one of ordinary skill in the art would be forced to rely on an improper "could be combined" or "obvious to try" standard to combine the respective teachings to approximate the applicants' invention. However, even if permitted to apply such a standard, Ruegg and Tymonko do not teach or suggest the evidence of unexpected results associated with the applicants' claimed combination of herbicides.

Therefore, Ruegg and Tymonko also do not establish a *prima facie* holding of obviousness and this rejection should be withdrawn.

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**CONCLUSION**

In view of the remarks and amendments herewith, the application is believed to be in condition for allowance. Favorable reconsideration of the application and prompt issuance of a Notice of Allowance are earnestly solicited. The undersigned looks forward to hearing favorably from the Examiner at an early date, and, the Examiner is invited to telephonically contact the undersigned to advance prosecution. The Commission is authorized to charge any fee occasioned by this paper, or credit any overpayment of such fees, to Deposit Account No. 50-0320.

Respectfully submitted,  
FROMMER LAWRENCE & HAUG LLP

By: Howard C. Lee  
Marilyn M. Brogan     Howard C. Lee  
Reg. No. 31,233     Reg. No. 48,104  
Telephone:     (212) 588-0800  
Facsimile:     (212) 588-0500

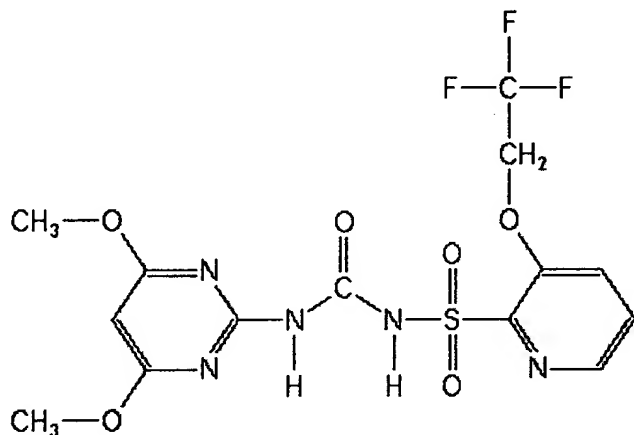
Attachment:     Trifloxysulfuron data sheet  
                       Fluthiacet data sheet

# trifloxysulfuron

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**STATUS:** ISO 1750 (published)  
**IUPAC:** 1-(4,6-dimethoxypyrimidin-2-yl)-3-[3-(2,2,2-trifluoroethoxy)-2-pyridylsulfonyl]urea  
**CAS:** *N*-[[4,6-dimethoxy-2-pyrimidinylamino]carbonyl]-3-(2,2,2-trifluoroethoxy)-2-pyridinesulfonamide  
**REG. NO.:** 145099-21-4  
**FORMULA:** C<sub>14</sub>H<sub>14</sub>F<sub>3</sub>N<sub>5</sub>O<sub>6</sub>S  
**ACTIVITY:** herbicides (pyrimidinylsulfonylurea herbicides)  
**NOTES:** When this substance is used as a salt, its identity should be stated, for example trifloxysulfuron-sodium [1991 19-58-9]

**STRUCTURE:**



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A data sheet from the Compendium of Pesticide Common Names

# fluthiacet

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**STATUS:** ISO 1750 (published)

**IUPAC:** [2-chloro-4-fluoro-5-(5,6,7,8-tetrahydro-3-oxo-1*H*,3*H*-[1,3,4]thiadiazolo[3,4-*a*]pyridazin-1-ylideneamino)phenylthio]acetic acid

**CAS:** [[2-chloro-4-fluoro-5-[(tetrahydro-3-oxo-1*H*,3*H*-[1,3,4]thiadiazolo[3,4-*a*]pyridazin-1-ylidene)amino]phenyl]thio]acetic acid

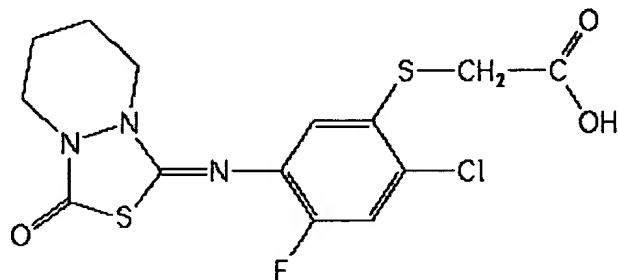
**REG. NO.:** 149253-65-6

**FORMULA:** C<sub>14</sub>H<sub>13</sub>ClFN<sub>3</sub>O<sub>3</sub>S<sub>2</sub>

**ACTIVITY:** herbicides (unclassified herbicides)

**NOTES:** When this substance is used as an ester or a salt, its identity should be stated, for example fluthiacet-methyl [117337-19-6].

**STRUCTURE:**



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A data sheet from the Compendium of Pesticide Common Names